

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOBBY TERRY CUNDIFF,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:18-cv-1249

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff seeks judicial review of a decision of the Commissioner of the Social Security Administration. 42 U.S.C. § 405(g). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court affirm the Commissioner's decision to deny Plaintiff's claim for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) Benefits. The matter is presently before the Court on Plaintiff's four objections to the Report and Recommendation, to which Defendant filed a response. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff's first objection concerns Listing 12.05 for intellectual disorders. Plaintiff argues that "[t]he Magistrate Judge just repeats the ALJ's analysis and does none of her own" (Objs., ECF No. 19 at PageID.679). Plaintiff's argument lacks merit. The Magistrate Judge properly found that "Plaintiff's argument ... is simply that the ALJ should have weighed the evidence differently

which is not a valid basis for relief” (R&R, ECF No. 18 at PageID.671). Plaintiff’s first objection is therefore properly denied.

Plaintiff’s second objection concerns the “ineffective ambulation” requirement under Listing 1.03. Plaintiff argues that “the ALJ’s conclusions ... are not supported by the substantial evidence” (Objs., ECF No. 19 at PageID.680). A party filing objections to a report and recommendation is required to “specifically identify the portions of the proposed findings, recommendations or report to which objections are made and the basis for such objections.” W.D. Mich. LCivR 72.3(b). Plaintiff does not specifically identify any portion of the Magistrate Judge’s proposed findings, recommendations or report to which this objection is made or the basis for such objection. Therefore, the second objection is denied.

Third, with regard to the medical opinion evidence, Plaintiff argues that “[t]he ALJ’s analysis lacks support from the medical evidence of record” (Objs., ECF No. 19 at PageID.681-682). Because Plaintiff again fails to specifically identify any portion of the Magistrate Judge’s proposed findings, recommendations or report to which this objection is made, this objection is also denied.

Last, with regard to the evaluation of Plaintiff’s obesity condition, Plaintiff argues that the Magistrate Judge improperly applied *Nejat v. Commissioner of Social Security*, 359 F. App’x 574 (6th Cir. 2006) (Objs., ECF No. 19 at PageID.682). Plaintiff’s argument lacks merit. The Magistrate Judge relied on *Nejat* for the proposition that “Social Security Ruling 02-1p does not mandate a particular mode of analysis, but merely directs an ALJ to consider the claimant’s obesity, in combination with other impairments, at all stages of the sequential evaluation” (R&R, ECF No. 18 at PageID.675, quoting *Nejat*, 359 F. App’x at 577). According to Plaintiff, “*Nejat* stands for the proposition that when obesity is not considered severe at step 2, the fact that the ALJ

had considered it and there was little in the record to sustain severity, that was sufficient” (*id.*). However, as Defendant points out, “[i]t matters not whether the ALJ found obesity to be severe or non-severe, so long as he properly considered the impairment throughout the decision” (Resp., ECF No. 20 at PageID.688). *See also Bledsoe v. Barnhart*, 165 F. App’x 408, 412 (6th Cir. 2006) (“It is a mischaracterization to suggest that Social Security Ruling 02-01p offers any particular procedural mode of analysis for obese disability claimants.”). Plaintiff’s fourth objection is denied.

Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 19) are DENIED, the Report and Recommendation of the Magistrate Judge (ECF No. 18) is APPROVED and ADOPTED as the Opinion of the Court, and the decision of the Commissioner of Social Security is AFFIRMED.

A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58.

Dated: November 4, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge